

## Combating discrimination: how a National Human Rights Institution can strengthen civil society organisations: an example of good practice

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# Combating Discrimination: How a National Human Rights Institution can strengthen Civil Society Organisations

An Example of Good Practice

Nina Althoff and Sera Choi



German Institute  
for Human Rights

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Since 2012, Nina Althoff is project director of the project "Lawyers for Human Rights and Diversity" at the German Institute for Human Rights; Sera Choi is working at the Federal Anti-Discrimination Agency with the Research Division.

## The Institute

The German Institute for Human Rights is the independent National Human Rights Institution in Germany. It is accredited according to the Paris Principles of the United Nations (A-Status). The Institute's activities include providing advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations. It is financed by the German Federal Ministry of Justice, the Federal Foreign Office, the Federal Ministry for Economic Cooperation and Development and the Federal Ministry of Labour and Social Affairs. Since May 2009, the Institute is the National Monitoring Body for the UN Convention on the Rights of Persons with Disabilities in Germany.

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# Preface

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Since its foundation, the German Institute for Human Rights has worked towards the effective protection against discrimination in Germany. The right to non-discrimination is more than just a human right, it is also a structural feature of all human rights. The starting point for the understanding of human rights is the recognition of the equal dignity of all persons; freedom and equality are indivisible elements of human rights. They allow for the equal exercise of freedom and autonomous determination of one's way of life, without distinction on the basis of sex, ethnic origin, religion, age, sexual orientation, disability or any other actual or attributed status. Thus, human rights aim for more than formal equality. They also require equal access to mechanisms for the enforcement of the rights.

Accordingly, the establishment of legal equality and the creation of enforcement mechanisms regarding these rights must be accompanied by measures that make these rights and procedures actually available in practice for those concerned. This results from the concept of access to justice as a further key human rights principle: human rights are rights, i.e. designed to be claimed by the right holder. Without actual access to justice the establishment of human rights within the national legal system would ultimately remain incomplete. Only where human beings can claim their rights before courts, will they be adequate-

ly recognized as legal persons. They must be able to judicially enforce their rights on their own initiative and in a self-determined manner. The State is accordingly obliged to provide for the institutions and procedures which guarantee the effective enforcement of their rights.

In Germany, it has been recognised that civil society organisations can play a vital role in supporting individuals in enforcing protection against discrimination. The Institute built on this understanding with the project "Non-Discrimination: Competencies for Associations". As a National Human Rights Institution, the Institute combines the national and the international protection against discrimination. The present English publication sets out the concept and results of the project for an international audience in a shortened form and intends to demonstrate how National Human Rights Institutions can co-operate on a national level with civil society organisations regarding the protection against discrimination.

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Director

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Head of Department Human Rights Policies  
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# 1.

## Introduction

The project "Non-Discrimination: Competencies for Associations" of the German Institute for Human Rights<sup>1</sup> aimed at strengthening the implementation and enforcement of non-discrimination rights through organisations, and thereby at promoting a general culture of non-discrimination and human rights in Germany.

Improving implementation of anti-discrimination-law is necessary as there are still significant deficiencies in the awareness and enforcement of non-discrimination rights in Germany. These deficiencies continue to exist despite moves to create a legal basis for improving the legal protection of persons affected by discrimination such as the adoption of the General Equal Treatment Act<sup>2</sup> which implemented the EU equality directives. Persons affected by discrimination are precisely those who often struggle to obtain legal protection, whether in court or extra-judicially. Discrimination is still present in all spheres of life, from the employment sector to education and housing for example. However, court proceedings against discrimination remain rare. This is, inter alia, due to structural barriers such as the lack of knowledge of those affected about their rights and available enforcement mechanisms, insufficient advisory structures and a shortage of financial resources for the enforcement of rights.

Effective protection against discrimination is the only way to ensure that human rights are not the exclusive privileges of the majority or an elite group. It guarantees equal opportunities for the actual exercise of human rights by all and is thus indispensable for overcoming the social exclusion of marginalized groups as well as for achieving complete and effective participation and inclusion. Knowledge and awareness of non-discrimination rights as well as their enforcement constitute fundamental requirements for effective protection against discrimination.

Civil society organisations play a significant role in the implementation and enforcement of non-discrimination rights. They can inform affected individuals about their rights as well as counsel and support them in court proceedings. Organisations can also, under certain circumstances, bring cases themselves and achieve far-reaching change through strategic litigation and the setting of precedent.

Nevertheless, due, inter alia, to a lack of awareness and knowledge, only a small number of organisations in Germany make use of the chance to work for the protection against discrimination in court proceedings and complaint procedures. Although many organisations have been fighting against the discrimination of marginalized groups for a long time, and although there has been a discernible professionalization, pooling, and specialization of anti-discrimination work since the adoption of the General Equal Treatment Act in 2006, only very few organisations follow an explicit anti-discrimination approach. The project took this as its starting point. By offering advice, information and training, the project supported organisations in strengthening their capacities within the framework of court proceedings and national and international complaint procedures as well as in developing a self-conception as an anti-discrimination organisation.

In this publication, the German Institute for Human Rights presents the project as an example for the development of organisations' capacities in the field of equality and human rights. After an overview of the role of civil society organisations in the mobilisation of non-discrimination and equality rights, the aims, approaches, means and methods will be set out. The publication ends with the results of the project and recommendations for the realisation of effective protection against discrimination.

<sup>1</sup> This project, which lasted for three years, was funded by the Federal Ministry for Labour and Social Affairs.

<sup>2</sup> German: Allgemeines Gleichbehandlungsgesetz (AGG). An official translation of the General Equal Treatment Act can be found at: [http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/EN/publikationen/agg\\_in\\_englischer\\_Sprache.pdf?\\_\\_blob=publicationFile](http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/EN/publikationen/agg_in_englischer_Sprache.pdf?__blob=publicationFile) (last visited: 6.12.2012)



## 2.

## The role of civil society organisations in the mobilisation of non-discrimination rights

Civil society organisations can contribute to the mobilisation of human rights and to the effectiveness of the prohibition of discrimination. Since for various reasons it is particularly difficult for persons affected by discrimination to access justice,<sup>3</sup> civil society organisations can participate in court proceedings and complaint procedures in order to support the persons concerned or to strengthen legal protection against discrimination on behalf of the public interest.

### 2.1 Support in individual cases

Civil society organisations can offer support to persons concerned in individual cases and assist them in enforcing their rights in situations where that would often be otherwise practically impossible. In part this is due to a lack of knowledge on the part of the affected persons about how to enforce their rights. It is also, however, due to the fact that the proceedings are often psychologically trying and interfere with the lives of those concerned. This burden as well as the anticipated legal costs and the length of proceedings may deter individuals from initiating court proceedings to enforce their rights. Additionally, those who are affected by discrimination often do not have the same social power or the resources for adequate legal advice as their adversaries. Further, the common difficulties relating to evidence in discrimination cases makes support urgently necessary, for instance in the form of testing

procedures<sup>4</sup> or compiling statistics. Civil society organisations are also important for facilitating access to justice because of their expertise and their experience in giving proximity to the persons concerned.

### 2.2 Strategic litigation

Furthermore, specific civil society organisation's rights, including the possibility of strategic litigation, provide them with the opportunity to contribute to social, political, and legal change beyond individual cases. In these instances, the primary goal is not the enforcement of individual legal rights. Rather, a case which is particularly exemplary or significant is brought to court as a precedent in order to achieve a legislative amendment or a policy change for example. It is not just easier for a civil society organisation to engage in possibly lengthy and stressful legal proceedings. Above all, legal proceedings in which organisations are engaged are indispensable in cases of structural and institutional discrimination as well as for the redress of imbalances in power. Legal proceedings can be brought to the attention of the public and thus serve the education and the raising of awareness of courts, authorities, and the society as a whole. Legal enforcement of prohibitions of discrimination is a significant but not the only element of an effective anti-discrimination policy.

<sup>3</sup> H. Rottleuthner/M. Mahlmann et al. (2011): Diskriminierung in Deutschland – Vermutung und Fakten. Baden-Baden: Nomos.  
<sup>4</sup> Testing procedures serve to gather evidence that can be used in court. In such procedures, comparators are employed in order to test whether a person, who shows an actual or attributed ground for discrimination, is treated the same as a person who does not show any prohibited grounds for discrimination. The person or institution under review is tested, for example, by phone calls concerning a staged interest in an apartment or by a written application for an advertised position.

## 2.3 Civil society organisations' options for participation in Germany

Civil society organisations enjoy a varying degree of rights in court proceedings and complaint procedures under German law. Such rights include class action lawsuits<sup>5</sup>, litigation in one's own name on another's behalf<sup>6</sup> and the possibility of acting as legal advisor<sup>7</sup>. These instruments must be distinguished from each other.<sup>8</sup>

The General Equal Treatment Act provides for the possibility of anti-discrimination organisations acting as a legal advisor<sup>9</sup> – the least far-reaching instrument. As legal advisors, organisations have a supportive function as they can act in oral court proceedings along with the affected persons. In contrast to the authorized legal representative, the legal advisor does not act in place of, but alongside the complainant. This constitutes an important source of support for persons suing against discrimination. Nevertheless, the option to act as a legal advisor is insufficient as it cannot always remedy structural imbalances of power or the portrayed factual as well as legal barriers, particularly in the case of indirect and structural discrimination. Defence against discrimination rests not only on the persons concerned, but as a problem of society, should be pursuable by way of a right to initiate class action lawsuits, which is granted independently of whether the organisation is individually concerned or whether individuals are engaged in the proceedings. The class action lawsuit constitutes the strongest form of participation by which organisations can autonomously obtain judicial findings on the violation of rights of individuals or of the public. In Germany, class action lawsuits are only exceptionally permissible, namely when explicitly provided for in a statute, since generally only those whose rights have been violated have standing before the courts.<sup>10</sup>

## 2.4 Opportunities for participation in international proceedings

Civil society organisations can also participate in international proceedings. For instance, organisations can contribute to the UN State reporting procedure by, inter alia, submitting parallel reports. They can also use the complaint procedures which exist within the framework of some UN conventions as well as at the European Court for Human Rights. These procedures may be available to individuals whose human rights were violated after the exhaustion of all domestic legal remedies. In such cases organisations can advise, accompany, and represent the applicants, or under certain circumstances, launch a complaint themselves. Additionally, civil society organisations can report gross and systematic human rights violations to the respective UN treaty bodies and thereby prompt the latter to initiate an inquiry procedure. Inquiry procedures are provided for in the UN Convention against Torture, the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, and the Convention for the Protection of Persons from Enforced Disappearance and can be initiated on grounds of reliable and well-founded indications that such breaches are occurring. This procedure allows the respective treaty body to carry out on-site investigations.<sup>11</sup> Parallel reporting, individual complaints and reports initiating inquiry proceedings do more than draw international attention to national problems. These instruments can also serve as a source of information for, for instance, the national parliament and other target groups, and can be used to raise public awareness of national problems within a country. This can allow access to the different governmental levels and ministries, and the recommendations and decisions of the human rights bodies can be referred to in order to intensify the dialogue.

5 German: Verbandsklagerecht.

6 German: Prozessstandschaft.

7 German: Beistandschaft.

8 For a comprehensive explanation in English of the different instruments available to civil society organisations in court proceedings and complaint procedures in Germany cf. <http://www.aktiv-gegen-diskriminierung.de/de/rolle-von-verbaenden/ rights-and-opportunities-for-participation.html> (last visited: 6.12.2012).

9 Section 23, para. 2 General Equal Treatment Act.

10 In Germany, class action lawsuits concerning the protection against discrimination can in exceptional cases be initiated in accordance with section 13 of the Federal Act on Equal Opportunities of Disabled People (German: Behindertengleichstellungsgesetz/BGG), in accordance with the respective equal treatment acts of the Länder, as well as in form of a consumer protection suit on the basis of the Law on Action for Injunction (German: Unterlassungsklagengesetz/ UKlaG) or the Act against Unfair Practices (German: Gesetz gegen den unlauteren Wettbewerb/ UWG) in conjunction with the General Equal Treatment Act.

11 There are numerous other possibilities for organisations to participate in international and regional human rights protection proceedings. For the UN framework cf. the handbook "Working with the United Nations Human Rights Programme: A Handbook for Civil Society" available at: <http://www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx> (last visited: 6.12.2012).

### 3.

## Strengthening the capacities of civil society organisations

The project "Non-Discrimination: Competencies for Associations" aimed at strengthening the protection against discrimination in Germany through civil society organisations and to promote a human rights based culture of equal opportunities. The goal was to raise the organisations' awareness of the protection against discrimination, to develop their own self-conception in this field, and to contribute to the internal development of corresponding measures. Particular focus was placed on strengthening the organisations' capacity to specifically take legal action against discrimination. The project followed a horizontal approach. This means that it was equally concerned with the protection against racist discrimination as well as with discrimination on grounds of sex, gender identity and sexual orientations, age, religion and belief, or disability.

### 3.1 Target group-specific approach

The project was aimed at different target groups. Non-public round table discussions were organised for business and employers' organisations in order to raise their awareness of protection against discrimination. These round table discussions allowed for an exchange between representatives of organisations for victims of discrimination and professional associations. The project, together with Christian welfare organisations, also organized internal symposiums in order to discuss the latter's ambivalent attitude towards the protection against discrimination and the contradictions between Section 9 General Equal Treatment Act (the so called "church-clause")<sup>12</sup> on the one hand, and the require-

ments of a human rights based protection against discrimination on the other.<sup>13</sup>

The project, however, primarily focused on measures for strengthening the capacities of civil society organisations in court proceedings and complaint procedures. Therefore, it particularly addressed organisations which represent disadvantaged groups. Through lectures, publications and the organisation of training events of different types, the project provided information to organisations on the opportunities open to them and equipped them accordingly with the necessary expertise. Conferences further allowed for exchange and networking. The Institute organised, for example, a conference called "Live Diversity – Establish Equality", in co-operation with, among others, the Federal Anti-Discrimination Agency, in which approximately 160 representatives of governmental and non-governmental institutions participated.<sup>14</sup> In total, the project carried out 26 events with approximately 640 participants in three years.

Furthermore, on the project's webpage [www.aktiv-gegen-diskriminierung.de](http://www.aktiv-gegen-diskriminierung.de), an online handbook was published containing comprehensive information on the protection against discrimination and on civil society organisations' rights regarding court proceedings and complaint procedures. An introduction to this matter is available in eight languages, including in sign language and in easy to read language for people with learning disabilities. In the online handbook, the target group, i.e. in particular the staff of organisations, can find legal information, concrete guidelines for action,

<sup>12</sup> Section 9 General Equal Treatment Act allows religious employers unequal treatment on grounds of religion.

<sup>13</sup> A documentation on the symposium "Non-Discrimination in diaconal fields of work – experiences and prospects" in cooperation with the Social Welfare Organisation of the Protestant Church in Germany (Diakonisches Werk der Evangelischen Kirche in Deutschland) is available in German at: [http://www.aktiv-gegen-diskriminierung.de/fileadmin/user\\_upload/Publikationen/Dokumentation/diskriminierungsschutz\\_in\\_diakonischen\\_arbeitsfeldern.pdf](http://www.aktiv-gegen-diskriminierung.de/fileadmin/user_upload/Publikationen/Dokumentation/diskriminierungsschutz_in_diakonischen_arbeitsfeldern.pdf) (last visited: 6.12.2012).

<sup>14</sup> Detailed documentation on this conference is available in English at: <http://www.aktiv-gegen-diskriminierung.de/de/willkommen/projektueckblick/rueckblick-fachtag-2010/review-symposium-2010.html> (last visited: 6.12.2012).

a comprehensive collection of links and a discussion forum in which members can network and discuss their issues in the protection against discrimination. They can create their own member profile as well as search for and contact other members. Selected training documentation of past seminars can be also found in the members' section.

### 3.2 Strengthening capacities through co-operation

For reasons of sustainability and accuracy of fit, the project, in co-operation with civil society organisations, carried out the majority of its training in two- to three-part sessions. Following an empowerment approach, the project specifically focused on umbrella associations of self-help and self-organisation bodies which represent groups of persons affected by discrimination. The project particularly worked together with organisations representing persons with disabilities and migrant organisations.

The co-operation started with a stocktaking and demand analysis for the co-operation partners in order to develop specifically tailored offers for the various circumstances of the organisations. Often, the co-operation partners' main concern was how to promote the issue of "protection against discrimination and rights of organisations" within the umbrella organisations as a task for the future on the federal as well as on the state level. They also sought to bring about changes to this effect within the organisations. Others were interested in reviewing past class action lawsuits which had been unsuccessful. Partially, the organisations already had expertise and had long been working to overcome discrimination. Nevertheless, for many, the national anti-discrimination legislations, such as the General Equal Treatment Act, as well as the international and European human rights conventions and the questions concerning the enforcement of rights were novel topics.

Because of the mainly voluntary nature of the organisations' work and personnel the planning of the training series took into consideration the resources available to each of them with most of the costs, such as travelling expenses, being reimbursed by the project.

The topics and target groups of the training events were chosen according to specific needs. At the request of some of the co-operation partners, the training sessions initially addressed the board members of the umbrella or member organisations. For the deci-

sion-makers involved, this served to strengthen the organisations' self-conception as an anti-discrimination organisation and to help reach a consensus on the necessity of enforcement measures. These enforcement measures concerned, for instance, amending the statutes of the organisations at federal and state level in order to be able to make use of organisations' rights or to achieve structural changes to allow for the provision of legal advice and legal support. The content and subjects of the training were therefore conveyed with a view to issues relevant to decision-making and organisation. Along with an introduction to the issue of protection against discrimination and an overview of the various instruments and of organisations' options for participation, the project coordinators particularly highlighted the benefits for the organisations and explained the next steps. The training then focused on equipping the members of the counselling services of the organisations with the requisite knowledge on action and practice. Here, the emphasis was on the concrete course of the procedures, case studies and exercises, the exchange of experience between organisations as well as problem-oriented questions. As the training was arranged as a series, it was additionally possible to discuss concrete past cases which had actually occurred in the daily practice of the participants.

In the course of the evaluation, the way forward, such as topics for follow-up events, was determined with the respective co-operation partners. The co-operation partners were advised and supported, for example, with respect to the amendment of their statutes, in registering with the Federal Office of Justice as consumer protection associations, and regarding further organisational development procedures.

On a smaller scale, the project also organised trainings for the public which allowed for networking across organisations as well as the imparting of expert knowledge regarding, for example, options for participating in international proceedings or with respect to issues of strategic litigation.

### 3.3 Contents and methods of training measures

The various training sessions complemented each other and usually took two to three days with between 15 to 20 participants. The training also explicitly addressed professionals other than lawyers. Accordingly, the comprehensive training material and lecture notes as well as the illustrating material and the overviews were designed with this in mind. The training

series usually began with an anti-bias-training<sup>15</sup> for determining the term 'discrimination'. Through the exercises, the participants reflected on their own experiences of discrimination, developed an experience-oriented model of discrimination and discussed the importance of an explicit anti-discrimination approach for their organisations' work. Subsequently the project coordinators explained the human rights concept of the protection against discrimination. This module also covered the horizontal approach to the fight against discrimination and served to raise awareness for the different forms of multi-dimensional discrimination.

The relevant legislation and the specific rights of the various organisations were then introduced by means of presentations, work in small groups, and exemplary cases. The focus was on the respective procedures, the admissibility requirements as well as on examples drawn from case law.

Other modules addressed strategic litigation as an instrument as well as anti-discrimination counselling.

For these modules the project worked together with external experts with practical experience. Persons with experience in counselling set out their standards for a qualified counselling and options for extra-judicial intervention, such as the issuing of complaint letters. Additionally, representatives of organisations that make use of strategic litigation for their work presented their experiences, particularly with regard to proceedings on the international level.

The training usually ended with the issue of implementation strategies and options. Ideas for the implementation were gathered together with the participants, and the next steps were planned, such as amendments of organisation statutes or the creation of internal working groups. At the request of some co-operation partners, the project presented possibilities for promotion in the field of anti-discrimination and developed concrete project concepts for guaranteeing the sustainability of the training after the end of the project term.

15 The anti-bias-approach is a method that was developed by Louise Derman-Sparks and Carol Brunson-Phillips in the beginning of the 1980's at the Pacific Oak College in California, USA.

## 4.

# Project results and recommendations for effective protection against discrimination

At the end of the project, the co-operation partners were asked for their opinion on the impact of the trainings. According to their appraisal, the following conclusions were drawn:

- the participating organisations recognized the benefit arising from their rights and instruments in legal proceedings; they wished to further increase their legal expertise and to exercise their rights;
- the project raised the participants' awareness of the issue of multi-dimensional discrimination as well as of the horizontal approach;
- organisations recognized the benefit of the international human rights protection mechanisms and some had even made use of the possibilities within the framework of the State reporting procedures and individual complaint procedures before the UN treaty bodies;
- the participating organisations recognized and were aware of the need for an active anti-discrimination policy and a human rights based argumentation; thereby, they strengthened their conception of themselves as anti-discrimination organisations;
- they adapted their counselling practice; cases of discrimination are now recorded and the persons concerned are referred to qualified advisory bodies;
- they implemented internal measures in order to create the legal prerequisites for the exercise of organisations' rights, such as the amendment of

the organisation's statute and the application for recognition with the competent authorities;

- internal developments were initiated for the creation of the structural prerequisites for the enjoyment of organisations' rights;
- grant applications were submitted and approved so that some organisations could carry out further training themselves;
- networks were developed with other players in the field of anti-discrimination policy;
- some co-operation partners increasingly acted as players in the field of anti-discrimination policy due to the strengthening of their self-conception as anti-discrimination organisations.

The project "Non-Discrimination: Competencies for Associations" contributed to the strengthening of civil society actors in the field of anti-discrimination and to awareness-raising regarding anti-discrimination legislation. Nevertheless, a number of challenges remain unresolved. Academia, non-governmental organisations and international human rights bodies have repeatedly pointed out that the weak infrastructure for anti-discrimination work – the lack of specialized institutions, action plans and programmes as well as the limited options for organisations – stand in the way of effective protection against discrimination in Germany.<sup>16</sup> For instance, the European Union Agency for Fundamental Rights points out that national equality bodies and other organisations need greater legal capacities to deal with complaints appropriately. Oth-

16 Cf. inter alia, M. Peucker/ C. Lechner (2010): Machbarkeitsstudie Standardisierte Datenerhebung zum Nachweis von Diskriminierung!? – Bestandsaufnahme und Ausblick, ed. Federal Anti-Discrimination Agency, Berlin; European Union Agency for Fundamental Rights (2010): EU-Midis. European Union minorities and discrimination survey. Report of the series "Data in Focus Report": Rights awareness and Equality Bodies, Vienna; Anti-Discrimination Association Germany, press release: Die Reichweite des Allgemeinen Gleichbehandlungsgesetzes ist begrenzt und es fehlt an Unterstützung für Betroffene bei der Rechtsdurchsetzung, Berlin 17 August 2012, <http://www.antidiskriminierung.org/?q=node/343> (last visited: 6.12.2012); European Commission against Racism and Intolerance (2009): ECRI-Report on Germany (fourth monitoring cycle), adopted on 19 December 2008, published on 26 May 2009, available at: [http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle\\_04/04\\_CbC\\_eng/DEU-CbC-IV-2009-019-ENG.pdf](http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_04/04_CbC_eng/DEU-CbC-IV-2009-019-ENG.pdf) (last visited: 6.12.2012); UN-Human Rights Committee, Concluding Observations on the sixth periodic report of Germany, adopted by the Committee at its 106<sup>th</sup> session, 15 October to 2 November 2012, available at: [www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-DEU-CO-6.doc](http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-DEU-CO-6.doc) (last visited: 6.12.2012).

er studies indicate that the German anti-discrimination legislation may have no effect as affected persons do not receive the required support due to weak equality bodies and low-level governmental commitment.<sup>17</sup>

Based on the results of the project, the German Institute for Human Rights has developed the following recommendations for the improvement of the protection against discrimination in Germany:

- Funding programs should be formed in order to establish advisory bodies which can provide specialized and qualified anti-discrimination advice for persons affected by discrimination. Such programs should particularly promote consultation by self-help organisations (for example peer-to-peer advice), as self-help organisations have the trust of the potentially affected person – especially in cases of discrimination by State authorities such as the police or schools. Additionally, legal expertise as well as the exercise of organisation-specific rights within civil society organisations should be specifically promoted and be eligible for grants. To this effect, a funding program should guarantee the funding of long-term anti-discrimination work.
- An advisory body for anti-discrimination organisations should be formed, providing technical, organisational, and legal support for the implementation of test cases and which can carry out training for the target group of anti-discrimination organisations in order to sustainably establish expertise on anti-discrimination law and to document new developments in anti-discrimination law for civil society organisations.
- A legal aid fund should be introduced for financing strategic litigation and test proceedings against discrimination which would otherwise be practically impossible due to a lack of financial and personnel resources of the relevant organisations. Further, a favourable cost system in discrimination cases should be introduced in courts and access should be facilitated to other means of funding such as court grants of legal aid or pro bono activities of lawyers.
- Alternative and extra-judicial complaint procedures as well as independent ombudsman's offices and equality bodies with powers to sanction and investigate in the field of non-discrimination should be strengthened or established on the federal and state levels in order to facilitate the exercise of non-discrimination rights by persons affected by discrimination – especially in cases of institutional discrimination, for instance, by the police, schools or authorities. In particular, the capacity of the Federal Anti-Discrimination Agency, which has neither the ability to investigate nor to lodge complaints, should be extended.
- All actors in justice and administration should be qualified in order to resolve the issue of a lack of expertise and knowledge on the part of the courts and lawyers as well as on the part of the relevant authorities. This dearth of knowledge often leads to indirect or multi-dimensional discrimination being overlooked or underestimated, or to an incorrect interpretation of the concept of accessibility.<sup>18</sup>
- A right to initiate class action lawsuits for anti-discrimination organisations should be created and included in the anti-discrimination laws, such as the General Equal Treatment Act, as the instrument of individual action is particularly inadequate in cases of indirect and structural discrimination and because the burden of protection against discrimination as a public challenge must not be shifted upon individuals.<sup>19</sup>

17 T. Huddleston et al., *Migrant Integration Policy Index* (2011), p. 49. The index assesses and compares the integration and anti-discrimination policies of 31 EU member States, the USA and Canada. Germany ranks 22<sup>nd</sup> regarding its anti-discrimination policy.

18 See, *inter alia*, S. Baer/M. Bittner/A.L. Götsche (2010): *Mehrdimensionale Diskriminierung*, ed. Federal Anti-Discrimination Agency, Berlin; U. Sacksofsky (2010): *Mittelbare Diskriminierung und das AGG*, ed. Federal Anti-Discrimination Agency, Berlin; as well as H. Rottleuthner/M. Mahlmann et al. (2011): *Diskriminierung in Deutschland – Vermutungen und Fakten*, p. 464 et seq.

19 See also European Union Agency for Fundamental Rights (2012): *Access to justice in cases of discrimination in the EU – Steps to further equality*, Vienna.



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